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ORIGINAL

No. 82-6792

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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ALEXANDER L. STEVAS,
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GIRVIES DAVIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

# RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

1) Whether a case or controversy exists where the defendant has served counsel with verified notice that he does not wish to proceed in this Court, has failed to sign an affidavit of indigency and does not personally challenge the fairness or result of the state court proceedings.

2) Whether petitioner was denied rights secured under the Eighth and Fourteenth Amendments to the United States Constitution by application of the Illinois Death Penalty Statute which strictly limits the discretion to seek or impose the death penalty and which provides mandatory review of every death sentence by the Illinois Supreme Court.

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OCTOBER TERM, 1982

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GARVIES DAVIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

---

## RESPONDEN'S BRIEF IN OPPOSITION

---

### OPINION BELOW

On February 18, 1983, the Illinois Supreme Court filed an opinion affirming petitioner's convictions and sentence of death. The case is reported at 95 Ill.2d 1, _____ N.E.2d _____ (1983).

### JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as treated more fully below, respondent submits that this Court lacks jurisdiction to entertain the questions presented by petitioner for review.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. VIII provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. CONST. amend. XIV provides, in pertinent part:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection

Ill. Rev. Stat. 1979, ch. 38, par. 5-2(c) provides, in pertinent part:

> §5-2. When Accountability Exists. A person is legally accountable for the conduct of another when:
>
> (c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.

Ill. Rev. Stat. 1979, ch. 38, par. 9-1(a)(1) and (2) provide:

> §9-1. Murder-Death penalties-Exceptions-Separate Hearings-Proof-Findings-Appellate procedures-Reversals. (a) A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death:
>
> (1) He either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) He knows that such acts create a strong probability of death or great bodily harm to that individual or another ....

Ill. Rev. Stat. 1979, ch. 38, par. 9-1(b)(3) provides:

> (b) Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of murder may be sentenced to death if: ...
>
> (3) the defendant has been convicted of murdering two or more individuals under subsection (a) of this Section or under any law of the United States or of any state which is substantially similar to Subsection (a) of this Section regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts so long as the deaths were the result of either an intent to kill more than one person or of separate premeditated acts ....

## STATEMENT OF FACTS

The opinion of the Illinois Supreme court, reported at 95 Ill.2d 1, _____ N.E.2d _____ (1983), fully sets forth the facts relevant to consideration of the petition and this brief in opposition.

## REASONS FOR DENYING THE PETITION

I.

PETITIONER'S COUNSEL HAS FILED THIS PETITION OVER THE EXPRESS OBJECTIONS OF THE PETITIONER.

The Illinois Appellate Defender does not represent Girvies Davis. Petitioner's counsel has misrepresented the posture of this case. He is attempting to appear before this Court without a client.

On May 13, 1983, counsel filed the following letter addressed to the Clerk of this Court along with the Petition for Writ of Certiorari:

> I have enclosed the Petition for Certiorari in the above-entitled cause, together with an unsigned affidavit of indigency on behalf of the petitioner who was determined to be indigent and has been represented by public defenders at each stage of his trial and appeal. I have forwarded a copy of the affidavit to the petitioner, but have not received it back from him.
>
> When I have received the signed affidavit, I will forward it to you. I would therefore ask that you accept this Petition as timely filed. Thank you for your cooperation.

Counsel's letter and the statement of facts in the petition omit any reference to <u>two</u> verified motions filed by the "petitioner" in the Illinois Supreme Court following denial of petition for rehearing. In pertinent part, those motions read:

> II. That the Defendant has been represented by counsel Mr. Charles M. Scheidle in the above cause. That the Defendant dones not need counsel Mr. Charles M. Scheidle anymore on this Appeal, because Defendant don't anymore which to Appeal the above case. [sic]
>
> * * *
>
> IIII. That the Defendant do not which to Appeal this case any forward, meaning not to the U.S. Supreme Court or anywhere. Defendant only which to <u>Die</u> as his date set for May 24, 1983 [sic].
>
> IIIII. That the Defendant Don't want anymore counsel, meaning Mr. Charles M. Scheidle or anyone filing anymore pleading in his behalf, unless the defendant sign an affidavit are something under oath for the court to go on, in which the defendant want do for any reason [sic].

Motion, May 6, 1983, App. at 1.

4. That all statutory requirements under the automatic appeal statutes have been met and that this executionee has excepted the Illinois Supreme Court ruling as it's final and ultimate disposition in the matter of indictment No. 79-cf-771, and automatic appeal No. 54276. Also that the executionee do not wish to appeal this matter to the U.S. Supreme Court or anywhere [sic].

5. That without proper representation of this executionee legal position, this executionee will be vulnerable to politicol attacks aimed solely at preventing an execution in Illinois, having no bearing whatever on my guitly or innocent, which if attempted in my name, could jeopardise this executionee human rights [sic].

6. That this executionee has been informed by present counsel, that such possibilities are a reality, manifesting in such quasipolitical organizations as the American Civil Liberties Union, and The Illinois Coalition Against the Death Penalty, as well as my own present appeals counsel [sic].

7. That this executionee feels that present counsel has fulfilled his obligation as appeal counsel and is no longer an advocate of my personal legal position, at this time [sic].

8. That counsel Mr. Charles M. Scheilde himself has admitted no alliance to me or my legal position at this time. [sic]

9. That counsel Mr. Charles M. Scheilde for his own political motivations as a defense attorney, may in fact mis-represent this executionee intentions, attitude and legal position, in order to avoid political as well as professional imbarrassment [sic].

This executionee realizes that there has been no executions in the state of Illinois since 1962 and that there are those who care nothing for the court's ruling, based on their political views of life and death, while totally ignoring the institutional circumstance which we, the condemned must indure [sic].

It is because I have the right of choice in this legal matter, that I motion this Supreme Court to regognize this executionee as counsel of record from this day forth, that there be a clear and truthful reflection of this executionees legal position on any and all issues which come before this court from this day to the day of execution, in order to insure that politics as they relate to the death penalty, are excluded from these proceedings, and that the law of the state of Illinois is not subverted, in the name of political opposition to the death penalty, which has no bearing on my actual guitly or innocent [sic].

Motion, May 10, 1983, App. at 4-5.

The Illinois Supreme Court summarily denied these motions without briefing or comment. App. at 9. The Illinois Supreme Court's refusal to "fire" petitioner's counsel for him, however, is hardly a mandate for counsel to carry political and philosophical questions into the federal courts without a client. This would seem particularly true where counsel is expending public monies designated only for the specific purpose of "representing indigent persons." (emphasis added) Ill. Rev. Stat. 1983, ch. 38, ¶208-10.

The petitioner has, twice, through verified motions "declined expressly to assert any claim" in this Court and has "explicitly repudiate[d]" counsel Charles Scheidel's "efforts to speak for him." See Gilmore v. Utah, 429 U.S. 1012, 50 L.Ed.2d 632, 635 97 S.Ct. 436 (1976) (Mr. Chief Justice Burger, concurring). Girvies L. Davis has requestsd no relief from this Court.

On the contrary, he has explicitly and repeatedly renounced attempts to bring this petition. He does not claim to be innocent of the crime for which he was convicted. He does not contend that he was treated unfairly in the state courts except by the current efforts to delay execution.

When the defendant confessed to this crime he made the following statement to the prosecutor:

> Would they send me on and let me go ahead and do it [i.e., execution] ... let me get it over with ... I would plead to all this if that would happen.
>
> (Vol. XV, R. 118-120)

After being informed that execution would necessarily take "a few months," he stated that he did not wish to endure the "suffering" of delay. (Vol. XV, R. 120-131) He continues to maintain that position. In all of the petitioner's trials and appeals, in this and his other murder cases, (See, e.g., People v. Davis, No. 54790 Ill. Sup. Ct.) his capacity to make intelligent and voluntary decisions has never been challenged.

Execution is a reality in Illinois mandated by the People of this state. The People have no interest in "rushing" the defendant's execution. However, the integrity and utility of the death penalty and indeed the entire system of criminal justice in Illinois, rests heavily on the certainty of the enforcement of every criminal penalty after the Illinois Supreme Court has affirmed a conviction and sentence.

Girvies Davis has expressed his desire to avoid languishing in prison. This Court should not compel him to endure the wait for certain execution while counsel pursues a virtually endless stream of discretionary reviews without the petitioner's consent. Neither petitioner nor justice are well-served by counsel's obvious decision to foresake his client's wishes, the rules of procedure of this Court and the demands of the law in an effort to preserve a philosophical position.

Absent petitioner's participation, there exists no case or controversy pending before this Court. This petition should be dismissed for want of jurisdiction.

II.

THERE IS NO CONFLICT BETWEEN THE HOLDING OF THE ILLINOIS SUPREME COURT AND THE DECISION IN PRESNELL V. GEORGIA.

Counsel first urges that the Petition for Writ of Certiorari should be granted so that this Court can resolve an alleged conflict between the decision of the Illinois Supreme Court in this case and the holding of this Court in Presnell v. Georgia, 439 U.S. 14, (1978). He argues that the sentencing jury never determined that petitioner contemplated that a life would be taken when the crimes were committed and, therefore, the Illinois Supreme Court improperly affirmed a death sentence on the basis of a factual determination not made by the trier of fact. This argument is entirely frivolous.

In Presnell, the Georgia Supreme Court found that the facts of the crimes supported the existence of an aggravating factor (forcible rape) which had not been found by the jury. Presnell, 439 U.S. at 15-16. The jury found the defendant guilty of rape but had been instructed as to both forcible rape and statutory rape and had failed to specify in the verdict which had been found. Statutory rape was not a statutory aggravating factor. Ga. Code §27-2534.1(b) (1975). As a result, the Georgia Supreme Court "convicted" the defendant of a crime in order to find the aggravating factor.

In this case, the petitioner had argued on direct appeal that the State had failed to prove that two prior murder convictions constituted aggravating factors under a proposed interpretation of the Illinois Death Penalty Statute. After an exhaustive study of the statute and its legislative history and purpose the Illinois Supreme Court rejected the petitioner's interpretation of the statute and his argument concerning the sufficiency of the convictions as aggravating factors. People v. Davis, 95 Ill.2d 1, 31-36, 447 N.E.2d 353 (1983). As a consequence, the Court held that where a "defendant is convicted of two or more murders resulting from intentional or knowing acts, the death penalty may properly be imposed." Davis, 95 Ill.2d at 36. The court specifically found

that these were the circumstances of this case. Id. ("We hold in this case that where, as here ...." (emphasis added)).

In a later discussion of this Court's holding in Enmund v. Florida, 458 U.S. _____, 73 L.Ed.2d 1140, 102 S.Ct. 3368 (1982), the Illinois court noted that the petitioner had not been sentenced to death for his participation in a felony during which a murder spontaneously occurred but, rather, for his conviction for the murder of two or more people. Davis, 95 Ill.2d at 50. The Court then observed that Enmund was further distinguished based on the inescapable conclusion "that defendant must have anticipated the killing of the victim in the instant case," in view of the pattern of the prior identical crimes. Davis, 95 Ill.2d at 51. This observation is entirely consistent with the findings that the jury necessarily reached in finding the statutory aggravating factor.

The court did not substitute alternative conclusions for those of the jury as in Presnell. The petitioner and an accomplice committed a string of residential burglaries of homes of elderly persons wherein they murdered everyone that happened to have the misfortune of being home at the time the crimes were committed. The jury necessarily concluded that petitioner knew that deaths would result when it found the intent requirement of the aggravating factor justifying the death sentence. The Illinois Supreme Court merely agreed with that conclusion and relied on it to distinguish Enmund.

III.

THE TRIER OF FACT FOUND THAT THE DEFENDANT INTENDED TO TAKE THE LIFE OF THE VICTIM(S).

Counsel next contends that this Court should review the decision of the Illinois Supreme Court in order to determine whether the Eighth Amendment permits the execution of a defendant absent a finding that the defendant intended that the victim's life would be taken. Counsel argues that it cannot be determined that he intended that the victim's life would be taken. Counsel's analysis of the facts is unreasonable.

In this case, the Illinois Supreme Court held that to impose a death sentence on the basis of multiple murders, the physical act leading to each murder must be accompanied by the requisite culpable mental state. People v. Davis, 95 Ill.2d 1, 35, 447 N.E.2d 353, (1983). The Court explained the requisite mental state in terms of "murders resulting from intentional or knowing acts," Davis, 95 Ill.2d at 36, and specifically considered situations where a "defendant knew his acts would result in death ..." Davis, 95 Ill.2d at 32. (emphasis in original) The Court then specifically concluded that it was "inescapable" that petitioner "anticipated the killing of the victim." Davis, 95 Ill.2d at 52. The Court was clearly satisfied to a certainty that the jury reached its conclusion based on this same high standard. No purpose can be served by this Court's expending its valuable time and resources to review that factual determination.

Moreover, counsel's related argument which relies upon Lockett v. Ohio, 438 U.S. 586 (1978), is misplaced. In Lockett, the defendant waited in a car while two others committed a single armed robbery and murder. This Court found that the murder had not been a part of the "plan". Lockett, 438 U.S. at 590. In the instant case, the crime was in the middle of a series of identical burglary/murders where the elderly residents were all killed.

This case does not "elevate conduct giving rise to an inference of intent to kill to an 'ultimate fact,' equivalent to possessing a purpose to kill." Petition at 12. Rather, it merely recognizes conduct resulting from a purpose to kill as being conduct resulting from a purpose to kill. The respondent respectfully suggests that the Eighth Amendment is not offended by the imposition of a death penalty in a case where multiple deaths resulted from crimes inescapably committed with a purpose to kill.

IV.

THE BIFURCATED ILLINOIS DEATH PENALTY SENTENCING STRUCTURE STRICTLY LIMITS THE FACTORS WHICH MAY BE CONSIDERED AS REASONS FOR IMPOSING DEATH.

Counsel next asks this Court to accept this case for review in order to determine "whether the Eighth Amendment ban on unguided discretion in capital cases is violated by a sentencing scheme which places no defined limits on the factors which may be considered as reasons for imposing death." Petition at 14. Contrary to the petitioner's representation, however, the Illinois death penalty sentencing process strictly limits the factors which may be relied on to determine whether a defendant may be sentenced to death. The case does not, therefore, present the question proposed.

The Petition for Writ of Certiorari does not mention a recent Illinois Supreme Court decision which squarely addressed this issue. In People v. Free, 94 Ill.2d 378, 447 N.E.2d 218 (1983), the court observed that:

> The defendant has raised Henry v. Wainwright (5th Cir. 1981), 661 F.2d 56, cert. allowed (1982), 457 U.S. _____, 73 L.Ed.2d 1326, 102 S.Ct. 2922, as additional authority relating to issues dealing with the third phase of his trial. The court in Henry held that a jury instruction permitting consideration of nonstatutory aggravating factors in a death penalty case was unconstitutional. We do not find Henry applicable because our statutory procedure is different from that of Florida's death penalty law, under which the defendant in Henry was sentenced.
>
> Florida's death penalty law provides for only two phases - guilt and sentencing. That State's statute provides that only statutory aggravating factors should be considered by the jury. In Henry, the trial judge gave an erroneous instruction in permitting the jury to consider "all factors which are aggravating." The defendant did not object at trial to the instruction, and the issue was waived on appeal. The Federal district court granted a writ of habeas corpus, and the court of appeals affirmed on constitutional grounds.
>
> In Illinois, unlike Florida, the judge or jury must first determine whether the State has proved a statutory aggravating factor beyond a reasonable doubt before it proceeds to weigh aggravating and mitigating factors and to make its decision whether or not to

> sentence the defendant to death. (Ill. Rev. Stat. 1977, ch. 38, pars. 9-1(g), (h); see Gregg v. Georgia (1976), 428 U.S. 153, 49 L.Ed.2d 859, 96 S.Ct. 2909.) We conclude that the sentencing body's discretion, under our statute, is suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action, satisfying Furman v. Georgia (1972), 408 U.S. 238, 33 L.Ed.2d 346, 92 S.Ct. 2726, and its progeny.

94 Ill.2d at 427. (emphasis in original)

The Illinois scheme allows the judge or jury to look to non-statutory factors only after there has been a determination that one of the narrow statutory factors is present. The result of this approach assures a tightly directed and limited, yet individually realistic, sentencing scheme. The United States Constitution requires no more.

V.

THE ILLINOIS DEATH PENALTY STATUTE DOES NOT ALLOW ARBITRARY IMPOSITION OF THE DEATH PENALTY.

Counsel makes two related arguments directed to arbitrary imposition of the death penalty. He argues that arbitrary application can result from "standardless discretion" in the hands of the prosecutors and from a lack of adequate review. Both arguments have been repeatedly rejected by the Illinois Supreme Court. See People v. Szabo, 94 Ill.2d 327,447 N.E.2d 193 (1983); People v. Brownell, 79 Ill.2d 508, 404 N.E.2d 181 (1980); People ex rel. Carey v. Cousins, 77 Ill.2d 531, 397 N.E.2d 809 (1979), cert. denied, 445 U.S. 953 (1980); People v. Kubat, 94 Ill.2d 437, 447 N.E.2d 247 (1983). This Court should not disturb the well-reasoned analysis of the Illinois Supreme Court which merely applies the decisional law of this Court to the Illinois statute.

Nonetheless, the People direct this Court's attention to the Illinois Constitution, Ill. Const. art. VI §4(b); the death penalty statute, Ill. Rev. Stat. 1979, ch. 38 §9-1(i); and Illinois Supreme Court Rule 603, Ill. Rev. Stat., 1979, ch. 110A, §603; all of which provide for direct appeal to the Illinois Supreme Court of any case in which a death sentence has been imposed. As that Court has statewide jurisdiction, these provisions ensure adequate and meaningful appellate review in capital cases.

Defendant, however, contends the Illinois review procedure is inadequate because the death penalty statute does not specifically provide for comparison review. This contention is without merit. The appropriate inquiry when analyzing a state appellate review scheme is whether that procedure "serves as a check against the random or arbitrary imposition of the death penalty." Gregg v. Georgia, 428 U.S. 152, 206 (1976). Direct review by the Illinois Supreme Court fully satisfies this standard.

VI.

THE DEFENDANT WAS NOT DENIED HIS CONSTITUTIONALLY PROTECTED RIGHT TO A JURY TRIAL OR EQUAL PROTECTION OF THE LAW BY THE PROSECUTION'S EXERCISE OF PEREMPTORY CHALLENGES TO THREE PROSPECTIVE JURORS.

Finally, the petitioner contends that he was denied rights secured to him by the Sixth and Fourteenth Amendment to the United States Constitution when all prospective black jurors were peremptorily challenged by the state.

At the outset, it must be pointed out that the record cannot support the representation that all prospective black jurors were peremptorily challenged by the State. The transcripts and Motion for a New Trial indicate that three prospective black jurors were excused by the State through exercise of its peremptory challenges. (Vol. X, R. 133, 160, 232; C-255) Defense counsel made and briefly argued a "slight motion" (Counsel's term: See Vol. XI, R. 52) concerning the jury panel, but contended only that:

> MS. HATCH: ... a number of the jurors were excluded, first of all, by what we believe was race by the State's Attorney. I believe the [sic] number of the jurors which were black were excused by the State. (Vol. XI, R. 52)

The record does not indicate that there were only three prospective black jurors; that no black prospective jurors were excused by the defendant; what percentage of black jurors were excused by whom; or, even, that the jury panel chosen was, in fact, all white. At best, the record of this case can only support a representation that defense counsel believed that three jurors had been excluded by the prosecutor on the basis of their race. This hardly approaches a showing of racial bias. Even the cases which have limited the prosecutor's discretion in this area have required some prima facie showing of discriminatory tactics in the record. See People v. Wheeler, 22 Cal.3d 258, 583 P.2d 748 (1978); Commonwealth v. Soares, 387 N.E.2d 499 (Mass. 1979).

More importantly, however, the defendant's argument must fail in light of the reasoned analysis of this Court in addressing this very issue over fifteen years ago and

recognizing that "[T]he essential nature of a peremptory challenge is that it is one exercised without a reason stated, without inquiry and without being subject to the Court's control." Swain v. Alabama, 380 U.S. 203, 220, (1965). This Court then went on to set down a presumption regarding the use of peremptory challenges by a prosecutor in a criminal case:

> The presumption in any particular case must be that the prosecutor is using the State's challenges to obtain a fair and impartial jury to try the case before the court. The presumption is not overcome and the prosecutor therefore subjected to examination by allegations that in the case at hand all Negroes were removed from the jury or that they were removed because they were Negroes.

380 U.S. at 222.

If there were systematic exclusion of identifiable groups from particular types of juries in any county or circuit, it could certainly be brought to the attention of the courts through the well-organized system of public and appellate defenders which exist in Illinois. Until such time, the People respectfully suggest that the prosecutors of this State are entitled to a presumption that they are living up the mandate of their office and serving all of the people of their respective counties to the best of their ethical and professional abilities.

## C O N C L U S I O N

For all of the foregoing reasons, the respondent asks this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Attorney General
State of Illinois

MICHAEL B. WEINSTEIN

KENNETH A. FEDINETS
TERENCE M. MADSEN
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Chicago, Illinois 60601
(312) 793-2570

June 21, 1983

# APPENDIX

D/MAOSER

Sent to 5th Circuit + the A.G.

RECEIVED
MAY - 6 1983
4TH DIST.

NO. 54276
IN THE
SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee.

vs.

GIRVIES L. DAVIS, Defendant-Appellant.

Appeal From the Circuit Court of the 20th Judicial Circuit
St. Clair County, Illinois
Case No. 79-cf-771
Presiding Judge
Honorable Stephen M. Kernan

RECEIVED
COURTS
TYRONE C. FAHNER
ATTORNEY GENERAL

MOTION FOR STATE OF EXECUTION AS SET FOR MAY 24, 1983

Now comes Girvies L. Davis, in (Pro-Se) and respectfully moves this Honorable Supreme Court, to Defendant constitutional right pertinent to Due Process and sought of Due Justice.

I. That the Defendant has been convicted in the above case for murder, inwhich death was imposed upon defendant in this above cause.

II. That the Defendant has been respresented by counsel Mr. Charles M. Scheidle in the above cause. That the Defendant dones not need counsel Mr. Charles M. Scheidle anymore on this Appeal, because Defendant don't anymore which to Appeal the above case.

III. That the Defendant has had this case heard before this Court, inwhich this Court affirm the conviction and the death sentence, February 13, 1983. Also there has been a Rehearing motion filed in this above cause, inwhich this Court Denied, April 8, 1983.

IIII. That the Defendant do not which to Appeal this case any forward, meaning not to the U.S. Supreme Court or anywhere. Defendant only which to Die as his date been set for May 24, 1983.

(I) Contuine page 2

IIIII. That the Defendant Don't want anymore counsel, meaning Mr Charles M. Scheidle or anyone filing anymore pleading in his behalf, unless the defendant sign an affidavit are something under oath for the court to go on, whichthe defendant want do for any reason.

IIIIII. That the Defendant stand strong and await his Execution as this court set for May 24, 1983.

WHEREFORE, I, Gervise L. Davis, prays that this Honorable Court will carry out the execution as been set for May 24, 1983 by this Court in this above cause.

Respectfully submitted:

GERVISE L. DAVIS, Pro-Se
Reg; M-06107
P.O. Box- 711
Menard, Illinois
62259

Subscribed and sworn to before me
this 2nd day of May, 1983.

Notary Public

My Commission Expires October 1, 1985

(II)

State of Illinois )
County of Pulaski ) ss.

AFFIDAVIT

Says: I, Louis L. Davis, being first duly sworn upon oath, depose and say.

I. That I am incarcerated in the Menard Correctional Center Quarter of [illegible], Box-771 Menard, Illinois County of Randolph State), serving execution in case No. 79-cf-771 and awaiting appeal in case No. 80-cf-5 in which I am [illegible] both case.

II. That I am the affiant/defendant in this foregoing motion and hereof Affidavit.

III. That the foregoing Motion and Affidavit is herein presented in truth and fact, true and correct in substance and in fact. Free pleadings are material by affiant, (Pro-se).

Further affiant sayeth not:

Louis L. Davis

Subscribed and sworn to before me this 2nd day of May, 1983

Charles R. Mattingly
NOTARY PUBLIC
My Commission Expires October 1, 1985

Louis L. Davis, (B-30
Reg: B-06107
P. O. Box- 711
Menard, Illinois 62259

D/ MIKE W

RECEIVED
MAY 10 1983
4TH DIST.

NO. 54276
IN THE
SUPREME COURT OF ILLINOIS

| | |
|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee. | ) Appeal From the Circuit Court of the 20th Judicial Circuit. St. Clair Co, Illinois |
| vs. GIRVIES L. DAVIS, Petitioner pro-se Executionee. | ) Case No. 79-cf-77I Presiding Judge Honorable Stephen M. Kernan |

WAIVER OF APPEAL(and) MOTION TO DISSMISS COUNSEL
PENDING
EXECUTION FOR MUDER(and) STATEMENT OF FITNESS

NOW COMES, GIRVIES L. DAVIS, IN HIS OWN PROPER PERSON,TO PETITION THIS COURT FOR APPOINTMENT AS HIS OWN COUNSEL AND LEGAL REPRESENTATIVE, AS OF THIS 6 DAY OF MAY,I983, that he may factually and honestly represent his own legal position in all matters pertain ing to this appeal and execution

IN SUPPORT OF ABOVE, THE EXECUTIONEE PRO·SE WILL STATE AS FOLLOWS

I. That the executionee was charged in a I979 indictment with a Murder and that he was tried and convicted of same, and was sentence to death.

2. That the executionee was sentenced December 5, I980 to death by electric current as a result of this indictment and conviction.

3. That the executionee was given an automatic appeal to the supreme court of IIIinois, in accordance with ILLinois statutes, and that said automatic appeal was affected and that the death sentence was affirmed by this Illinois Supreme Court on the I8 day of Febru ary I983. Also there was an rehearing motion filed in the above cause, inwhich this Court denied, April 8, I983.

4. That all statutory requirements under the automatic appeal statutes have been met and that this executionee has excepted the Illinois Supreme Court ruling as it's final and ultimate disposition in the matter of indictment No. 79-cf-77I, and automatic appeal No. 54276. Also that the executionee do not wish to appeal this matter to the U.S. Supreme Court or anywhere.

5. That without proper representation of this executionee legal position, this executionee will be vulnerable tp politicol attacks aimed solely at preventing an execution in Illinois, having no bearing whatever on my guitly or innocent, which if attempted in my name, could jeopardise this executioneee human rights. (I@Page of 2)

6. That this executionee has been informed by present counsel, that such possibilities are a reality, manifesting in such quasipolitic al organizations as the American Civil Liberties Union, and The Illinois Coalition Against the Death Penalty, as well as my own present appeals counsel.

7. That this executionee feels that present counsel has fulfilled his obligation as appeal counsel and is no longer an advocate of my personal legal position, at this time.

8. That counsel Mr. Charles M. Scheilde himself has admitted no alliance to me or my legal position at this time.

9. That counsel Mr. Charles M. Scheilde for his own political motivations as a defense attorney, may in fact mis-represent this executionee intentions, attitude and legal position, in order to avoid political as well as professional imbarrassment.

This executionee realizes that there has been no executions in the state of Illinois since 1962 and that there are those who care nothing for the court's ruling, based on their political views of life and death, while totally ignoring the institutional circumstance which we, the condemned must indure.

It is because I have the right of choice in this legal matter, that I motion this Suprome Court to regognize this executionee as counsel of record from this day forth, that there be a clear and truthful reflecti on of this executionees legal position on any and all issues which come before this court from this day to the day of execution, in order ## to insure that politics as they relate to the death penalty, are excluded from these proceedings, and that the law of the state of Illinois is not subverted, in the name of political opposition to the death penalty, which has no bearing on my actual guitly or innocent.

Respectfully submitted:

DAVID S. DAVIS
Reg: B-06107
Box -711
Menard, Illinois 62259

Subscribed and sworn to before me
this 6th day of May, 1983

Charles R. Mottinsky
NOTARY PUBLIC
My Commission Expires October 1, 1985

## O R D E R

It is hereby ordered that as of this 6 day of May, 1983, Girvies L. Davis, being of sound mind and body:; having established through this petition that he is fully apprised of his circumstance before this Court as Supreme Court of Illinois; having full knowledge of his pending execution; having full knoeledge of his rights to further appeal this death sentence, should he so desire; having motioned this Court to waiver of appeal and dissmiss counsel appoint; having as well ask this court to appoint him as counsel of record pro-se, during the enterim of the pre-execution period, that he may factually represent his own legal position, to avoid political manipulation as well as personal opposition from outsiders; that he may respond directly to this Illinois Supreme Court as well as to the jurisdiction from which this litigation originated, is granted the appointment of himself as counsel pro-se, that he may respond directly pro-se to this Court as well as all other interestedparties, until such time as he may be executed, or request counsel other than himself.

ORDER for motion of pro-se status is granted this_____ day of May, 1983, having no further business before this court.

Date Granted_____:

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

STATE OF ILLINOIS )
)
COUNTY OF RANDOLH ) ss.
)

# A F F I D A V I T

SAYS: I, Girvies L Davis, BEING first duly sworn upon oath, depose and say.

I. That I am incarcerated in the Menard Correctional Center Quarter of death-row, Box -7II Menard, Illinois County of Randolh 62259, awaiting execution in case No. 79-cf-&77I and awaiting appeal in case No 80-cf-5 inwhich is a death case

2. That I am the affiant/Petitioner in this foregoing motion and hereof Affidavit.

3. That the foregoing Motion and Waiver, Affidavit is been prepared in truth and good faith, true and correct in substance and in fact. Proceedings are pursued by Petitioner, (Pro-se).

Respectfully Submitted:
Girvies L. Davis
GIRVIES L. DAVIS
Reg : N-06107
Box- & 7II
Menard, Illinois 62259

Suubscibed and sworn to before me
this 6th day of May, 1983
Charles R Mattingly
NOTARY PUBLIC
My Commission Expires October 1, 1985

## NOTICE AND PROOF OF SERVICE

To. The Supreme Court Of Illinois
State Of Illinois
Springfield, Illinois 6270I

John Baricevic
State's Attorney
St. Clair Co.
IO Public Square
Belleville, Illinois 62220

&

Mr. Charles M. Scheidle
Asst. Appellate Defender
Office Of the States's
Appellate DEfender
Springfield, Illinois
6270I

State's Attorney
Appellate
Service Commission
Suite 909 myers Bldy
Springfield, Ill 6270I

CERTIFICATE OF SERVICE

The undersigned being the defendant (pro-se) in the above proceedings, housed in the Menard Correctional Center, Box-7II, Menard, illinois 62259. Certifies that on May 6, I983, Defendant caused parties (The Supreme Court),(Mr. Charles M. Scheidle, Asst Defender) and (John Baricevic, State's Attorney),(States Attorney appellate)in this cause, by depositing and proceeding in a seal pre-postage paid envelope. Mail at the mailroom of the Menard Correctional Center , in the United States mail.

Respectfully Submitted:
Girvies L. Davis
GIRVIES L. DAVIS
Reg: N-06I07
Box- 7II
Menard Illinois 62259

Subscribed and sworn to before me
this 6th day of May, I983
Charles R. Mattingly
NOTARY PUBLIC
My Commission Expires October 1, 1985

D/TERRY

STATE OF ILLINOIS

OFFICE OF

# CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

JULEANN HORNYAK
CLERK

TELEPHONE
AREA CODE 217
782-2035

May 11, 1983

Mr. Girvies Davis
Reg. NO. N-06107
P. O. Box 711
Menard, IL 62259

THE COURT HAS THIS DAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No. 54276 - People State of Illinois, appellee, vs. Girvies Davis, appellant.

The motion by appellant, pro se, to dismiss present counsel and to proceed as counsel of record, pro se, in all matters pertaining to this appeal and execution is denied.

RECEIVED

TYRONE C. FAHNER
ATTORNEY GENERAL

JH:th
cc: Neil F. Hartigan ✓
John Baricevic
SAD - Springfield, IL

JULEANN HORNYAK, CLERK

No. 82-6792

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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GIRVIES DAVIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

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CERTIFICATE OF SERVICE AND
STATEMENT OF TIMELY FILING

I, Michael B. Weinstein, a member of the bar of this Court and representing Respondent in this cause, certify:

1.) That I have served ten (10) copies of the Respondent's Brief In Opposition on the below-named party, by depositing such copy in the United States mail at 160 North LaSalle Street, Chicago, Illinois, with the proper postage affixed thereto, and with the envelope addressed as follows:

Alexander Stevas, Clerk
United States Supreme Court
Supreme Court Building
Washington, D.C. 20543

2.) That all parties required to be served have been served.

I further state that this mailing took place on June 21, 1983, and within the time permitted for filing a brief in opposition to a petition for a writ of certiorari.

BY: Michael B. Weinstein
MICHAEL B. WEINSTEIN
Assistant Attorney General
188 West Randolph Street
Suite 2200
Chicago, Illinois 60601
(312) 793-2570

SUBSCRIBED and SWORN to
before me this 21st day of
June, 1983.

Gail D. Federico
NOTARY PUBLIC